

Peter P. McNamara, Esq.  
John T. Seybert, Esq.  
RIVKIN RADLER LLP  
Attorneys for Defendant  
Oxford Health Plans (NY), Inc.  
926 Reckson Plaza  
Uniondale, New York 11556-0926  
(516) 357-3000

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

BELA KURTZ,

Civ. Act. No.

Plaintiff,

**NOTICE OF REMOVAL**

-against-

OXFORD HEALTH PLANS,

Defendant.

-----X

The Defendant/Petitioner herein, Oxford Health Plans (NY), Inc. (incorrectly sued herein as “Oxford Health Plan” (“Oxford”)), by its attorneys, RIVKIN RADLER LLP, respectfully shows as follows:

1. On or about January 27, 2006, plaintiff BELA KURTZ (“Plaintiff”) commenced an action against Oxford in the Civil Court of the City of New York, County of New York, New York, alleging that she is entitled to reimbursement from Oxford pursuant to health insurance coverage it issued to her for the cost of certain health care services Plaintiff allegedly received July 23, 2004 through August 31, 2004. A true and correct copy of Plaintiff’s Summons and Verified Complaint (hereinafter “Complaint”) in that action are annexed hereto as Exhibit “A”.

2. Plaintiff alleges that she is entitled to recover benefits from her health insurance plan issued by Oxford under which she was enrolled and was issued Member number

5711671\*01. According to Oxford's records, Plaintiff was enrolled under an employee welfare benefit plan provided by her employer, C.H.B.&S. Management Corp.

3. This is a civil action in which the United States District Court has original jurisdiction pursuant to 28 U.S.C. § 1331, in that the validity of Plaintiff's claim for payment of health insurance benefits is dependent upon a claim of right under the laws of the United States, specifically the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.*, as amended ("ERISA"). Thus, all of Plaintiff's claims either "relate to" or are otherwise pre-empted by ERISA. See Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58, 61 (1987); Massachusetts Mutual Life Ins. Co. v. Russell, 473 U.S. 134, 146 (1985).

4. For the foregoing reasons, this action may be removed to this Court pursuant to 28 U.S.C. § 1441.

5. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §1446(a).

6. This Notice of Removal is being filed within the time period required by law. 28 U.S.C. § 1446 (b). Written notice of removal will be given the adverse party as required by law, and a true and correct copy of this Notice of Removal will promptly be filed with the Clerk of Civil Court of the City of New York, County of New York, New York, as provided by law.

WHEREFORE, Oxford as Petitioner for removal, requests that the above-named action now pending against it in the Civil Court of the City of New York, County of New York, be removed from the United States District Court for the Southern District of New York.

Dated: Uniondale, New York  
February 24, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John T. Seybert", followed by a horizontal line.

Peter P. McNamara (PPM-2075)  
John T. Seybert (JTS-5014)  
RIVKIN RADLER LLP  
Attorneys for Defendant/Petitioner  
OXFORD HEALTH PLANS (NY), INC.  
(incorrectly sued herein as Oxford Health Plans)  
926 Reckson Plaza  
Uniondale, New York 11556-0926  
516-357-3000  
RR File No.: 009456-00192

TO: Abraham Wax, P.C.  
Attorney for Plaintiff  
750 Third Avenue  
New York, NY 10017  
(212) 922-9004

## **EXHIBIT A**

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

INDEX NO.

064536/05

BELA KURTZ,

Plaintiff,

SUMMONS

-against-

OXFORD HEALTH PLANS,

Defendant.

**RECEIVED**

JAN 27 2006

**LEGAL DEPT.**

C. PERPETUO

To the above named defendant(s):

YOU ARE HEREBY SUMMONED to appear in the Civil Court of the City of New York, County of New York, at the office of the Clerk of said Court at 111 Centre Street, New York, NY 10013 in the County of New York, City and State of New York, within the time provided by law as noted below and to file your answer to the annexed complaint with the Clerk of the Court and with the attorney for the Plaintiff named below. Upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint together with the costs of this action.

Dated: New York, New York  
December 21, 2005

*A. Wax*  
ABRAHAM WAX, P.C.  
Attorney for Plaintiff  
750 Third Avenue  
New York, NY 10017  
(212) 922-9004

Note: The law provides that:

- (a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or
- (b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery within the City of New York, you are allowed THIRTY days after proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

Attest:  
Ralph H. Sautman  
Connecticut State Marshal  
Fairfield County

FILED  
12/23/2005  
N.Y. County, NY  
104336 CVN 2005

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

INDEX NO.

064536/05

BELA KURTZ,

Plaintiff,

-against-

**VERIFIED  
COMPLAINT**

OXFORD HEALTH PLANS,

Defendant.

Plaintiff by the undersigned attorney alleges:

**FIRST CAUSE OF ACTION - BREACH OF CONTRACT**

1. DEFENDANTS are present in the State of New York or do business on a regular basis in the State of New York.

2. Plaintiff is a resident of the County of Kings, State of New York.

3. Plaintiff is covered by a health insurance plan issued by defendant OXFORD HEALTH PLANS under member number 5711671\*01.

4. From July 23 through August 31, 2004, plaintiff incurred medical expenses which were covered by her OXFORD FREEDOM PLAN, member number 5711671\*01.

5. Plaintiff was treated by Haym Salomon Home for Nursing and Rehabilitation whose charges were the usual and customary charges for such treatment in that locality.

6. Plaintiff sent to the defendants copies of the invoices and/or health claims covering all the services and supplies rendered to her.

7. Haym Salomon Home for Nursing and Rehabilitation rendered the treatment, services and supplies in value in excess of the sum of \$13,650.00, under its agreement with the patient, which sum was the agreed amount, and is the usual and customary value for said treatment, services, and supplies in that locality.

8. Plaintiff has demanded payment of the full amount of the sum due for the treatment, services, and supplies rendered to her.

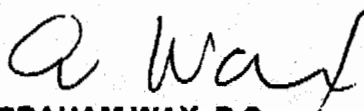
9. The defendants have refused to pay the sum due leaving a balance of \$13,650.00, which sum is due and owing and has been duly demanded.

10. Defendant has breached its agreement with the plaintiff in that defendant failed to pay the cost of the treatment incurred by plaintiff, making the plaintiff liable to Haym Salomon Home for Nursing and Rehabilitation for the balance of the invoices.

11. Plaintiff has been damaged in the sum of \$13,650.00.

WHEREFORE, Plaintiff demands judgment against the defendants in the sum of \$13,650.00, together with counsel fees, interest from July 23, 2004, and the costs and disbursements of this action.

Dated: New York, New York  
December 21, 2005

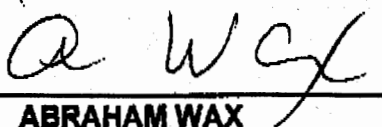
  
ABRAHAM WAX, P.C.  
Attorney for Plaintiff  
750 Third Avenue  
New York, NY 10017  
(212) 922-9004

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS:

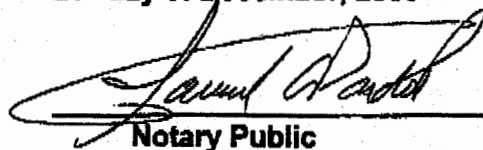
Abraham Wax, being duly sworn, deposes and says that:

I am the attorney for the plaintiff herein and I am familiar with the facts. I have read the annexed complaint and know the contents thereof. The same are true to my knowledge, except those matters stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following: DOCUMENTS IN DEPONENT'S FILE.

The reason I make this affidavit instead of the plaintiff, is that the plaintiff's office is not located in the county where deponent maintains his office.

  
ABRAHAM WAX

Sworn to before me this  
21<sup>st</sup> day of December, 2005

  
Notary Public

MANUEL G. PARDO  
Notary Public, State of New York  
No. 01PA5044272  
Qualified in Queens County  
Commission Expires May 30, 2007